

AMENDED IN SENATE JUNE 25, 2015

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1518

**Introduced by Committee on Aging and Long-Term Care (Assembly
Members Brown (Chair), Gipson, Levine, and Lopez)**

March 10, 2015

An act to amend and renumber Section 14132.99 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1518, as amended, Committee on Aging and Long-Term Care. Medi-Cal: nursing facilities.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing federal law authorizes the state to obtain waivers for home- and community-based services. Existing law authorizes the department to seek an increase in the scope of these waivers, in order to enable additional nursing facility residents to transition into the community, subject to implementation of these amended waivers upon obtaining federal financial participation, and to the extent it can demonstrate fiscal neutrality within the overall department budget.

This bill would authorize the department to seek additional increases in the scope of the home- and community-based Nursing Facility/Acute Hospital Waiver. The bill would require the department to, by February

1, 2016, apply for an additional 5,000 ~~slots~~ *slots, to be added in the 2016–17 fiscal year*; beyond those currently authorized for the waiver. The bill would, *for each fiscal year after the 2016–17 fiscal year*, require that the department consider specified factors, consult with stakeholders, calculate the need for additional slots, and seek federal approval to add those slots to the ~~waiver each year beginning January 1, 2016~~. *waiver*. Prior to submitting the annual request for additional waiver slots and the waiver renewal request, the bill would require the department to notify the appropriate fiscal and policy committees of the Legislature of the number of waiver slots included in the waiver renewal request along with data supporting that number of slots.

The bill would require the department to make an eligibility and level of care determination, and inform the individual about available waiver services, within three business days of receipt of the individual's application for those patients who are in acute care hospitals and who are pending placement in a nursing facility and for those individuals who are more likely than not to be placed in a hospital or nursing facility within 30 days. The bill would require an individual residing in an institutional setting at a level of care included in the waiver to be determined to qualify for a waiver level of care that is no lower than the level of care he or she receives in the institution in which he or she resides, and would prohibit the department from using more stringent eligibility criteria for a waiver level of care than for the corresponding institutional level of care.

The bill would provide that an individual who enrolls in the waiver upon attaining 21 years of age who is no longer eligible to receive services through the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) shall receive the same level of services under the waiver that he or she received through the EPSDT program.

The bill would require the department to adjust the cost limitation category of the waiver to use an aggregate cost limit formula, as specified. The bill would require the department to implement its provisions only if the department has obtained the necessary approvals and receives federal financial ~~participation~~. *participation, and only to the extent that it can demonstrate that its actual total expenditures for services provided under the waiver will not exceed a specified threshold.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 14132.99 of the Welfare and Institutions Code, as added by Section 3 of Chapter 551 of the Statutes of 2005, is amended and renumbered to read:

14132.991. (a) For the purposes of this section, “facility residents” means individuals who are currently residing in a nursing facility and whose care is paid for by Medi-Cal either with or without a share of cost. The term “facility residents” also includes individuals who are hospitalized and who are or will be waiting for transfer to a nursing facility.

(b) By February 1, 2016, the department shall apply for an additional 5,000 slots, to be added in the 2016–17 fiscal year, beyond those currently authorized for the home- and community-based Nursing Facility/Acute Hospital Waiver, to ensure that individuals residing in, or at risk of, out-of-home placements, including nursing facilities, can be considered for, and, if eligible, receive services from the waiver without delay.

(c) (1) ~~Each year, For each fiscal year after the 2016–17 fiscal year, the department shall consider calculate the need for additional slots, and seek federal approval to add those slots to the Nursing Facility/Acute Hospital Waiver, based on a consideration of the factors listed in paragraph (2);~~ (2). ~~In calculating the need for additional slots, the department shall also consult with stakeholders, including, but not limited to, individuals who use or would like to use waiver services, programs with state contracts to divert people from or help people leave nursing homes, the designated protection and advocacy organization, independent living centers, area agencies on aging, staff county staff providing for the delivery of in-home supportive services authorized under Section 12301.6, individuals providing services available under Article 7 (commencing with Section 12300) of Chapter 3, known as the In-Home Supportive Services program, and managed care plans providing Medi-Cal long-term services and support, calculate the need for additional slots, and seek federal approval to add those slots to the Nursing Facility/Acute Hospital Waiver.~~ supports.

(2) The factors considered by the department pursuant to paragraph (1) shall include, but not be limited to, all of the following:

1 (A) Any waiting list for Nursing Facility/Acute Hospital Waiver
2 services, including, but not limited to, waiting lists for a particular
3 level of care.

4 (B) The results of surveys of nursing home residents, including,
5 but not limited to, the Minimum Data Sets (MDS), which identify
6 residents who want to leave nursing homes.

7 (3) Prior to submitting the annual request for additional waiver
8 slots and the waiver renewal request, the department shall notify
9 the appropriate fiscal and policy committees of the Legislature of
10 the number of waiver slots included in the waiver renewal request
11 along with data supporting that number of slots.

12 (d) (1) For those patients who are in acute care hospitals and
13 who are pending placement in a nursing facility, and for those
14 individuals who are at imminent risk of placement in a hospital or
15 nursing facility, the department shall expedite the processing of
16 waiver applications in order to facilitate remaining in a community
17 setting and hospital discharges into the community rather than to
18 nursing facilities.

19 (2) For purposes of this section, both of the following definitions
20 apply:

21 (A) “Imminent risk” means more likely than not to occur within
22 60 days, as determined by a treating professional, including, but
23 not limited to, a physician, a licensed clinical social worker, or a
24 nurse.

25 (B) “Expedite the processing of waiver applications” means
26 that the department shall make an eligibility and level of care
27 determination, and inform the individual about available waiver
28 services, within three business days of receipt of the application.

29 (e) An individual residing in an institutional setting at a level
30 of care included in the Nursing Facility/Acute Hospital Waiver
31 shall be determined to qualify for a waiver level of care that is no
32 lower than the level of care he or she receives in the institution in
33 which he or she resides. The department shall not use more
34 stringent eligibility criteria for a waiver level of care than for the
35 corresponding institutional level of care.

36 (f) (1) An individual who enrolls in the Nursing Facility/Acute
37 Hospital Waiver upon attaining 21 years of age who is no longer
38 eligible to receive services under the Early and Periodic Screening,
39 Diagnosis, and Treatment (EPSDT) program shall be eligible for
40 at least the same level of services under the Nursing Facility/Acute

1 Hospital Waiver that he or she received through the EPSDT
2 program unless the individual, and his or her authorized
3 representative, as applicable, agree that the individual's needs have
4 decreased and a lower level of service is needed.

5 (2) The department shall maximize federal financial participation
6 to meet the identified level of need for in-home nursing to ensure
7 that a consumer does not experience a reduction in in-home nursing
8 when he or she reaches 21 years of age.

9 (g) The Nursing Facility/Acute Hospital Waiver shall be
10 amended to add the following services:

11 (1) One-time community transition services as defined and
12 allowed by the federal Centers for Medicare and Medicaid Services,
13 including, but not limited to, security deposits that are required to
14 obtain a lease on an apartment or home, essential furnishings, and
15 moving expenses required to occupy and use a community
16 domicile, set-up fees, or deposits for utility or service access,
17 including, but not limited to, telephone, electricity, and heating,
18 and health and safety assurances, including, but not limited to, pest
19 eradication, allergen control, or one-time cleaning prior to
20 occupancy. These costs shall not exceed five thousand dollars
21 (\$5,000).

22 (2) Habilitation services, as defined in Section 1915(c)(5) of
23 the federal Social Security Act (42 U.S.C. Sec. 1396n(c)(5)), and
24 in attachment 3-d to the July 25, 2003, State Medicaid Directors
25 Letter re Olmstead Update No. 3, to mean services designed to
26 assist individuals in acquiring, retaining, and improving the
27 self-help, socialization, and adaptive skills necessary to reside
28 successfully in home- and community-based settings.

29 (h) By July 1, 2016, the department shall adjust the cost
30 limitation category of the Nursing Facility/Acute Hospital Waiver
31 to use an aggregate cost limit formula.

32 (i) By July 1, 2016, the aggregate cost limit formula described
33 in subdivision (h) shall be based on 100 percent of the actual
34 current rates for the corresponding institutional levels of care
35 specified in the Nursing Facility/Acute Hospital Waiver. Any cost
36 increase in an institutional level of care shall be matched by an
37 increase in the cost limitation of the corresponding Nursing
38 Facility/Acute Hospital Waiver level of care.

39 (j) (1) The department shall implement this section only to the
40 extent it can demonstrate fiscal neutrality within the overall

1 department budget, and federal fiscal neutrality as required under
2 the terms of the federal waiver, and only if the department has
3 obtained the necessary approvals and receives federal financial
4 participation from the federal Centers for Medicare and Medicaid
5 Services. Contingent upon federal approval of the waiver
6 expansion, implementation shall commence within six months of
7 the department receiving authorization for the necessary resources
8 to provide the services to additional waiver participants.

9 (2) The department shall implement the amendments made to
10 this section by the act that added this paragraph only to the extent
11 it can demonstrate ~~fiscal neutrality within the overall department~~
12 ~~budget~~, *that the department's actual total expenditures for home,*
13 *community-based, and other services under the Nursing*
14 *Facility/Acute Hospital Waiver will not, in any year of the waiver*
15 *period, exceed 100 percent of the amount that would be incurred*
16 *by the Medi-Cal program for these individuals, absent the waiver,*
17 *in institutions for which the individuals qualify,* and federal fiscal
18 neutrality as required under the terms of the federal waiver, and
19 only if the department has obtained the necessary approvals and
20 receives federal financial participation from the federal Centers
21 for Medicare and Medicaid Services. Contingent upon federal
22 approval of the waiver expansion, implementation shall commence
23 within six months of the department receiving authorization for
24 the necessary resources to provide the services to additional waiver
25 participants.